

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



**FILED**

10/17/22

04:59 PM

**K2210009**

Appeal of Central Coast Community Energy from )  
Citation E-4195-0126 issued on September 16, 2022 )  
in the amount of \$25,000 issued by the California )  
Public Utilities Commission Consumer Protection )  
and Enforcement Division )

---

K.22-10-XXX

**NOTICE OF APPEAL OF CENTRAL COAST COMMUNITY ENERGY  
TO CITATION E-4195-0126**

Brian Kimball  
General Counsel  
**CENTRAL COAST COMMUNITY ENERGY**  
70 Garden Court, Suite 300  
Monterey, CA 93940  
Email: bkimball@3ce.org

Josh Stoops  
**BRAUN BLAISING & WYNNE, P.C.**  
555 Capitol Mall, Suite 570  
Sacramento, CA 95814  
Telephone: (916) 326-5812  
E-mail: stoops@braunlegal.com

October 17, 2022

On behalf of Central Coast Community Energy

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Appeal of Central Coast Community Energy from	)	
Citation E-4195-0126 issued on September 16, 2022	)	
in the amount of \$25,000 issued by the California	)	K.22-10-XXX
Public Utilities Commission Consumer Protection	)	
and Enforcement Division	)	

---

**NOTICE OF APPEAL OF CENTRAL COAST COMMUNITY ENERGY  
TO CITATION E-4195-0126**

Pursuant to Resolutions E-4195 and ALJ-377, Central Coast Community Energy (“CCCE”) files this notice of appeal from Citation E-4195-0126 (“Citation”), issued on September 16, 2022, for a specified violation in the amount of \$25,000, associated with the filing of its June to December 2022 Month-Ahead Adjusted Load Forecast (“Adjusted Forecast”). This notice of appeal is timely because it has been submitted to the California Public Utilities Commission (“Commission”) within 30 days from the issuance of the Citation.<sup>1</sup>

CCCE respectfully requests that the Commission dismiss the Citation and assess no penalties, or alternatively, limit the penalty to the period of time between CCCE’s receipt of notice of the error and resubmission of the Adjusted Forecast. CCCE submitted its Adjusted Forecast on the day it was required, but CCCE acknowledges that it inadvertently used the year-ahead, instead of month-ahead, spreadsheet. After CCCE’s representative contacted the Commission’s Energy Division (“ED”) regarding the Adjusted Forecast, ED provided notice of this technical error and CCCE remedied the error the next day. The Citation should not have

---

<sup>1</sup> The Citation was issued on September 16, 2022, which resulted in the Notice of Appeal being due 30 days later on October 16, 2022. Rule 1.15 of the Commission’s Rules of Practice and Procedure provides that if the due date falls on a Sunday, the time limit is extended to include the first day thereafter (i.e., Monday, October 17, 2022).

been issued but, even it was appropriately issued, ED incorrectly calculated the penalty from the date the original Adjusted Forecast was filed. The penalty should instead have been calculated starting with the date that CCCE received notice of the error through the date CCCE remedied the error. Further, under the Commission’s penalty factors, the penalty should be eliminated or significantly reduced.

## **I. FACTUAL SUMMARY AND BACKGROUND**

### **A. Central Coast Community Energy**

CCCE, formerly known as Monterey Bay Community Power Authority, is a joint powers authority serving as the Community Choice Aggregator (“CCA”) for Monterey, San Benito and Santa Cruz Counties, and parts of San Luis Obispo and Santa Barbara Counties. CCCE serves more than 400,000 customers throughout the Central Coast, including residential, commercial, and agricultural customers.

### **B. The Adjusted Load Forecast Process**

The *2022 Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings*, issued on October 18, 2021 (“2022 Filing Guide”), details the process for submission of an adjusted load forecast. Section 11 of the *2022 Filing Guide* explains that Load Serving Entities (“LSEs”) are required to submit an adjusted load forecasts in March, which facilitates the “local” and “flexible” resource adequacy (“RA”) reallocation process (or “true-up”).<sup>2</sup> LSEs then have five days to make any corrections to their Adjusted Forecast following the submission in March.<sup>3</sup> ED then notifies the LSE of incremental adjustments and provides those adjustments 45 days before the July month-ahead compliance due date (approximately the

---

<sup>2</sup> *2022 Filing Guide* at Section 11.

<sup>3</sup> *Id.*

beginning of April).<sup>4</sup> The adjusted local and flexible RA requirements are then used for July through December month-ahead filings.<sup>5</sup>

### **C. Citation E-4195-0126**

Adjusted load forecasts were due on March 17, 2022, and LSEs, like CCCE, were required to submit their adjusted load forecasts to both the California Energy Commission (“CEC”) and the Commission.<sup>6</sup> CCCE submitted its Adjusted Forecast to both agencies on the due date as required. At the time of CCCE’s submission, no notice was provided from the CEC or the Commission that CCCE’s Adjusted Forecast was in any way deficient.

Approximately one month later, on April 12, 2022, CCCE’s procurement consultant (the Alliance for Cooperative Energy Services, or “ACES”) asked ED whether ED would provide a notification when CCCE’s Adjusted Forecast was approved. After not receiving a response, ACES contacted ED again to ask about the Adjusted Forecast approval. The next day, ED staff responded that ED does not approve the Adjusted Forecast and copied CEC staff on the email response. It was at this point ACES learned, for the first time from the CEC, that the Adjusted Forecast had been submitted on the wrong form. This prompted ED to request that CCCE resubmit the Adjusted Forecast using the correct template. From the time of original submission to this request to resubmit the Adjusted Forecast was twenty-eight days (March 17 to April 14). The next day CCCE resubmitted its Adjusted Forecast.<sup>7</sup>

Several months later, on August 24, 2022, the Consumer Protection and Enforcement Division (“CPED”) requested confirmation from CCCE that the Adjusted Forecast was submitted on the wrong form and for the first time suggested that the Adjusted Forecast

---

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> *2022 Filing Guide* at 13.

<sup>7</sup> Citation at 2, 4.

contained incorrect numbers. CCCE acknowledged that the original Adjusted Forecast was submitted on the wrong form. However, CCCE disputed that the information was incorrect; CCCE's forecasts use stochastic modelling, which produces a non-substantive difference from the prior run of the model. The differences between the original Adjusted Forecast and the resubmission were due only to this modelling variation. Thus, CCCE maintains that the numbers submitted in the original Adjusted Forecast and the resubmission were correct as of the dates of those submissions.

On September 16, 2022, CCCE received the Citation from CPED for a specified violation under the RA citation program. The reason for the Citation was listed as “[f]ailure to file a Preliminary/Adjusted Load Forecast at the time and manner required.”<sup>8</sup> The Citation calculates the penalty based on the *Specified Violations and Scheduled Penalties* table provided in Resolution E-4195.<sup>9</sup> This table prescribes a penalty of \$1,000 per incident, plus \$500 per day for the first ten days the filing/submission was late and then \$1,000 per day thereafter for “failure to file a Preliminary/Adjusted Load Forecast at the time and manner required.”<sup>10</sup> The Citation states that, because the original Adjusted Forecast used the wrong template and different numbers, the Adjusted Forecast was submitted “29 days late” and calculates the penalty to be \$25,000.<sup>11</sup>

## **II. BASIS FOR APPEAL**

CCCE appeals the Citation on the following grounds:

- A. Resolution E-4195 does not set forth a penalty for failing to file an Adjusted Load Forecast at the time and manner required.

---

<sup>8</sup> Citation at 1.

<sup>9</sup> Citation at 3, 5.

<sup>10</sup> Citation at 3, 5.

<sup>11</sup> *Id.*

B. CCCE filed its Adjusted Forecast by the March 17 deadline and cured any errors in a timely manner after Energy Division's notice.

C. Under the Commission's penalty factors from Decision ("D.") 98-12-075, the Citation amount is inconsistent with Commission policy and the public interest.

### **III. ARGUMENT**

#### **A. Resolution E-4195 Does Not Set-Forth a Penalty for Failing to File An Adjusted Load Forecast.**

The Citation provides the reason for the penalty is due to CCCE's failure to submit "a Preliminary/Adjusted Load Forecast at the time and manner required."<sup>12</sup> However, Resolution E-4195 only permits staff to issue a penalty associated with the Preliminary Load Forecast.<sup>13</sup> While CCCE respects the need for Commission staff to have some discretion to issue citations, Commission staff should not be permitted to unilaterally enlarge their delegation of authority by adding bases for citations that do not appear in Resolution E-4195. For this reason, the Commission should eliminate or reduce the penalty amount as requested elsewhere in this Appeal.

#### **B. CCCE Filed Its Adjusted Forecast by the March 17 Deadline and Cured Any Errors in a Timely Manner After Energy Division's Notice.**

The Citation states that CCCE filed its Adjusted Forecast twenty-nine days *late*, but this is incorrect. CCCE filed its Adjusted Forecast on the due date, March 17, 2022, and did so in good faith, believing the Adjusted Forecast satisfied the requirement. Between March 17 and April 14 (twenty-eight days), CCCE staff had no reason to believe that its Adjusted Forecast had not been correctly submitted, accepted, or that it needed to take any further action. A penalty calculation starting at the deadline may make some sense for an LSE that entirely neglected to

---

<sup>12</sup> Id. at 1.

<sup>13</sup> Resolution E-4195 at Appendix A, "Specified Violations and Scheduled Penalties".

make the submission, but that is a fundamentally different situation from an LSE that provided the submission but mistakenly provided the submission on the wrong form. CCCE did not fail to submit an Adjusted Forecast on the deadline; it had substantially complied with the requirement. Nevertheless, the Citation ignores CCCE's original submission and penalizes CCCE like an entity that did not make the required showing at all.

The Citation also states that CCCE's information was incorrect because it was inconsistent between the original Adjusted Forecast submitted in March and the resubmission in April. It is unclear from the language of the Citation whether the CPED intends for this to be a separate basis for the penalty. The Citation suggests that the difference between the information included in the Adjusted Forecast in March and the information included in April was due to the removal of customer load. This is incorrect. The only difference between the numbers provided in March and the numbers provided in April were due to CCCE's stochastic forecast modelling. CCCE submitted its most current and accurate information in both the original and resubmission, but the modelling provides slightly different results from each modelling run. If the purpose of the Adjusted Forecast is to provide the CEC and Commission with a current and accurate picture of the amount of load served by each LSE, then it was reasonable for CCCE to submit contemporaneous and accurate information. Submitting *different* information should not be misconstrued as submitting *incorrect* information under these circumstances.<sup>14</sup>

Instead, given these factors, if CCCE should be penalized at all, such penalty should be based on the date that CCCE had *notice* that its Adjusted Forecast was submitted on the wrong form. Basing the penalty calculation on the notice date is consistent with the Commission's approach to other RA penalties. For example, when LSEs submit their month-ahead and year-

---

<sup>14</sup> Citation at 3.

ahead RA filings showing their procured resources, ED provides correction notices by email to LSEs for any errors that involve typos or numerical errors and do not affect compliance – “minor errors” – and LSEs have a chance to correct the error without penalty. Even if there is a “substantive” error, meaning the LSE failed to meet its RA procurement requirement, the LSE can reduce its penalty following receipt of a deficiency notice by providing sufficient capacity within five business days.<sup>15</sup> In this situation, CCCE made an inadvertent error submitting information to the Commission, which is analogous to a “minor” error because it involved submitting information in the wrong format. More relevant to this appeal, however, when given the chance to correct the error, CCCE did so promptly.

Based on the way the Citation calculates the penalty, an LSE could incur daily penalties indefinitely, despite the LSE making every effort to comply and having no reason to believe that they are out of compliance. In this situation, CCCE only learned of the error after its consultant reached out on its behalf. It is unclear, absent outreach from CCCE’s consultant, when CEC or ED staff would have notified CCCE of the need for resubmission. In fact, it appears that ED staff were unaware of CCCE’s mistake until CCCE’s consultant brought it to their attention. If ED staff had reviewed the Adjusted Forecast upon submission and identified the error, CCCE may have been able to remedy the error within the five-day period permitting adjustments to the Adjusted Forecast.<sup>16</sup>

During the extended twenty-eight-day period, CCCE had no reason to suspect it was incurring daily penalties and CCCE had no way to mitigate these penalties. As the Commission has stated, penalties and citations should be designed to deter further violations.<sup>17</sup> The penalty,

---

<sup>15</sup> *2022 Filing Guide* at 47-48.

<sup>16</sup> See *2022 Filing Guide* at 13 and 31. Note that CCCE remedied the error within five days of learning of the error, which would have been well within this adjustment period.

<sup>17</sup> See D.98-12-075 at section D.2.b.



applied in the way calculated in the Citation, could not deter CCCE's behavior because CCCE had no knowledge that its Adjusted Forecast was deficient during the intervening twenty-eight days.

**C. The Citation Amount Associated with CCCE's Adjusted Forecast is Inconsistent with Commission Policy and the Public Interest.**

Aside from a miscalculation of the penalty, the Commission's penalty factors from D.98-12-075 require reduction or elimination of the penalty.<sup>18</sup> The five factors include: (1) the severity of the offense, (2) the conduct of the utility before, during, and after the offense, (3) the financial resources of the LSE, (4) role of precedent, and (5) the totality of the circumstances in furtherance of the public interest.<sup>19</sup>

*The Severity of the Offense*

CCCE's error did not cause harm to ratepayers, nor did it cause harm to the regulatory process.<sup>20</sup> As the Citation states, CCCE filed the Adjusted Forecast by the due date and corrected the mistake within one day of learning of the error.<sup>21</sup> At no point did this error result in resource deficiencies, and no additional procurement was needed to correct this error. Furthermore, while CCCE recognizes that the delay could have caused harm to the integrity of the regulatory process, CCCE demonstrated respect for the regulatory process throughout the period in question by filing the Adjusted Forecast on the due date and resubmitting it promptly when the defect was identified.<sup>22</sup> In fact, CCCE's representative, not ED, reached out requesting

---

<sup>18</sup> D.98-12-075 (recently applied in K.20-05-006, Resolution ALJ-394 (February 12, 2021) ("CPA Resolution")).

<sup>19</sup> Id. at section D.2.b.

<sup>20</sup> See *CPA Resolution* at 3-4 (determining where there was no actual harm and respect for the regulatory process, the severity of the offense was minimal); D.98-12-075 at section D.2.b.i.

<sup>21</sup> Citation at 2, 4.

<sup>22</sup> See *CPA Resolution* at 3-4.

clarification that the Adjusted Forecast was approved, indicating that CCCE made a good faith effort to comply with the regulatory process.

#### Entity's Conduct

CCCE's error was inadvertent.<sup>23</sup> CCCE submitted the Adjusted Forecast on the due date, but inadvertently used the wrong form. The Citation does not allege that CCCE knew it had made an error, and in fact, even ED did not discover the error until after CCCE's representative requested further clarification. Once the error was identified, CCCE resubmitted a corrected Adjusted Forecast the next day. At no point was CCCE evasive or uncooperative, nor did it intentionally delay submission or resubmission.

#### Entity's Financial Resources

CCCE's financial resources should not be a significant factor in setting the penalty in this instance. CCCE recognizes that the Commission must enforce RA requirements in a nondiscriminatory manner across all LSEs,<sup>24</sup> but also notes that as a CCA, penalties are ultimately paid by customers, rather than shareholders.

#### Role of Precedent

To the best of CCCE's knowledge, no other LSE has been penalized for inadvertently using the wrong form to submit a load forecast, and no other LSE has had its penalty calculated from the original due date instead of the notice date. The closest precedent to CCCE's current situation is the resource adequacy citation appeal of Clean Power Alliance of Southern California ("CPA").<sup>25</sup> There, CPA was penalized for minor typographical errors in its RA filing, which

---

<sup>23</sup> See *CPA Resolution* at 4 (analyzing application of citation to LSE due to inadvertent error); D.98-12-075 at section D.2.b.ii.

<sup>24</sup> See Public Utilities Code § 380(e).

<sup>25</sup> K.20-05-006.

never resulted in CPA having an actual procurement deficiency.<sup>26</sup> In the CPA Resolution, the Commission concluded that, “CPA’s error ... was a simple typographical or numerical error for which there is no Commission precedent.”<sup>27</sup> Furthermore, the Commission determined that since there was no actual harm and CPA demonstrated respect for the regulatory process, the citation should be dismissed.<sup>28</sup> As discussed above, CCCE made every effort to comply with the requirements and promptly corrected the Adjusted Forecast upon learning of the mistake. Following precedent from the CPA Resolution, which appears to be the most applicable precedent to this situation, CCCE’s penalty should also be dismissed. At minimum, CCCE’s penalty should be reduced to the time between receiving notice of the error (April 14) and the date of the resubmission (April 15).

#### *Totality of the Circumstances*

The totality of the circumstances favors a reduction or elimination of CCCE’s penalty. CCCE made a good-faith effort to submit its Adjusted Forecast on time, the delay did not cause actual harm in the form of under-procured resources available to the grid, CCCE remedied the error promptly upon notice of the mistake, and, in similar circumstances, the Commission has eliminated the penalty in its entirety. Based on these factors, it is both appropriate and equitable for the penalty to be dismissed, or in the alternative, reduced to a nominal penalty based on the date of notice of the error and resubmission.

#### **IV. PROCEDURAL REQUEST**

As stated above, CCCE believes that this Citation should be dismissed immediately and

---

<sup>26</sup> *CPA Resolution* at 5-6.

<sup>27</sup> *CPA Resolution* at 6.

<sup>28</sup> *Id.*

without the need for an evidentiary hearing, especially given precedent established by the CPA Resolution. CCCE believes that few, if any, facts will ultimately be disputed between the parties, however, to the extent the Commission requires further information or a specific factual showing, CCCE requests an expedited discovery and evidentiary hearing process. CCCE also requests use of the Commission's alternative dispute resolution ("ADR") mechanism so that CCCE can demonstrate to Commission staff the reasons the penalty should be mitigated. The use of ADR may create a setting whereby resolution may be reached more efficiently.

## V. CONCLUSION

For the reasons described above, CCCE requests that the Commission summarily dismiss the Citation and waive the penalties in the Citation, or, alternatively, reduce the penalties in the Citation to an amount reflecting the time period between actual notice of the error and resubmission.

Dated October 17, 2022 at Sacramento,  
California

Brian Kimball  
General Counsel  
**CENTRAL COAST COMMUNITY ENERGY**  
70 Garden Court, Suite 300  
Monterey, CA 93940  
Email: bkimball@3ce.org

Respectfully submitted,

/s/ Josh Stoops  
Josh Stoops  
**BRAUN BLAISING & WYNNE, P.C.**  
555 Capitol Mall, Suite 570  
Sacramento, CA 95814  
Telephone: (916) 326-5812  
E-mail: stoops@braunlegal.com

On behalf of Central Coast Community  
Energy

ATTACHMENT 1

CENTRAL COAST COMMUNITY ENERGY'S ELECTION TO APPEAL

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



☐ I hereby state that I will comply with Citation No. E-4195-0126, dated September 16, 2022, and herewith pay a fine in the amount of \$25,000.00.

- Please make check payable to the California Public Utilities Commission and send, along with a copy of this form, to:

**CALIFORNIA PUBLIC UTILITIES COMMISSION****Fiscal Office****505 Van Ness Ave., Room 3000****San Francisco, CA 94102**

- Please PDF a copy of this form to Donovan Tan at [Donovan.Tan@cpuc.ca.gov].
- You may direct all questions regarding this citation to Donovan Tan at [213-999-8478] or [Donovan.Tan@cpuc.ca.gov].

I hereby acknowledge that if I do not appeal the citation, and do not pay the full amount within 30 days, any unpaid balance shall accrue interest at the legal rate of interest for judgments, and Commission Staff and the Commission may take action provided by law to recover unpaid penalties and ensure compliance with applicable statutes and Commission orders, decisions, rules, directions, demands or requirements.

☒ I hereby appeal Citation No. E-4195-0126, dated September 16, 2022.

- To appeal this citation, follow the directions described in this citation, and described in detail in Appendix A of Resolution ALJ-377 (both attached herein).
- Please PDF a copy of this form to Donovan Tan at [Donovan.Tan@cpuc.ca.gov].

Signature: s/ Brian Kimball

Name and Title: Brian Kimball, General Counsel

Name of Company: Central Coast Community Energy

Citation No.: E-4195-0126

Date: October 17, 2022